

SOLICITOR

OCT 13 2009

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

U.S. PATENT & TRADEMARK OFFICE

**3M INNOVATIVE PROPERTIES
COMPANY and 3M COMPANY,**

Civil No. _____

Plaintiffs,

vs.

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

CENTRAL SOLUTIONS, INC.,

Page 6, 090, 395
6, 534, 069
6, 623, 744
7, 081, 246

Defendant.

Plaintiffs 3M Innovative Properties Company and 3M Company (collectively, "3M") bring this Complaint to stop and remedy defendant Central Solutions Inc.'s ("Central Solutions") infringement, in this district and elsewhere, of 3M's United States patent rights relating to skin sanitizer products. 3M alleges as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1, *et seq.*

THE PARTIES

2. Plaintiff 3M Innovative Properties Company is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business at 3M Center, St. Paul, Minnesota, 55133.

33. Defendant Central Solutions has caused and will continue to cause 3M irreparable injury and damage by infringing the '744 patent. 3M will suffer further irreparable injury, for which 3M has no adequate remedy at law, unless and until Central Solutions is enjoined from infringing the '744 patent. The balance of hardships and the public interest favor entry of a permanent injunction to prohibit Central Solutions from continuing to infringe the '744 patent.

FOURTH CLAIM FOR RELIEF
CENTRAL SOLUTIONS' INFRINGEMENT OF THE '246 PATENT

34. 3M realleges and incorporates by reference Paragraphs 1 through 18 of this Complaint.

35. Defendant Central Solutions has been and is directly infringing, actively inducing others to infringe and/or contributing to the infringement of the '246 patent by making, using, offering for sale and/or selling hydroalcoholic compositions, including, for example, DermaCen Lotionized Hand Sanitizer and private label products, in this district and elsewhere in the United States, in violation of 35 U.S.C. § 271.

36. On information and belief, defendant Central Solutions will continue to directly infringe, actively induce others to infringe, and/or contribute to the infringement of the '246 patent unless and until Central Solutions is enjoined by this Court.

37. On information and belief, defendant Central Solutions' continuing infringement of the '246 patent after notice of this action and/or notice of the '246 patent constitutes willful infringement. By knowingly continuing to commit acts of

infringement with knowledge of the '246 patent, Central Solutions' actions are objectively reckless and constitute willful infringement of the '069 patent.

38. Defendant Central Solutions has caused and will continue to cause 3M irreparable injury and damage by infringing the '246 patent. 3M will suffer further irreparable injury, for which 3M has no adequate remedy at law, unless and until Central Solutions is enjoined from infringing the '246 patent. The balance of hardships and the public interest favor entry of a permanent injunction to prohibit Central Solutions from continuing to infringe the '246 patent.

PRAYER FOR RELIEF

3M respectfully requests this Court:

A. To enter judgment that Central Solutions has infringed the '395, '069, '744 and '246 patents;

B. To enter orders preliminarily and permanently enjoining Central Solutions, and its respective officers, agents, servants, and employees, and all persons in active concert or participation with any of them, from infringing, whether directly or indirectly, any claim of the '395, '069, '744 or '246 patents;

C. To award to 3M damages in amounts sufficient to compensate 3M for Central Solutions' infringement of the '395, '069, '744 and '246 patents, together with pre-judgment and post-judgment interest and costs, pursuant to 35 U.S.C. § 284;

D. To enter judgment that Central Solutions' infringement of the '395, '069, '744 and '246 patents has been willful, and as a result to increase by three times the damages awarded to 3M, pursuant to 35 U.S.C. § 284;

E. To declare this case to be "exceptional" pursuant to 35 U.S.C. § 285, and as a result to award to 3M its reasonable attorneys' fees, expenses, and costs incurred in this action; and

F. To award to 3M such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, 3M respectfully requests a trial by jury of any and all issues on which a trial by jury is available under applicable law.

Dated: October 2, 2009

Respectfully submitted,



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3M Innovative Properties Company and

3M Company

fb us.4447239.01

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

3M Innovative Properties Company and 3M Company

(b) County Of Residence Of First Listed Plaintiff Ramsey County, MN
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, And Telephone Number)

David J. F. Gross (No. 208772)

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3M Innovative Properties Company

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P.O. Box 33427

St. Paul, Minnesota 55133-3427

Telephone: (651) 736-4533

DEFENDANTS

Central Solutions, Inc.

County Of Residence Of First Listed Defendant Wyandotte County, KS

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(Place an "X" in One Box For Plaintiff And One Box For Defendant)

- | | | | |
|---|---|---|---|
| Citizen of This State | <input type="checkbox"/> 1 <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability LABOR <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal <input type="checkbox"/> 28 USC 158 <input type="checkbox"/> 423 Withdrawal <input type="checkbox"/> 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 841 IHA (1395I) <input type="checkbox"/> 842 Black Lung (923) <input type="checkbox"/> 843 DIWC/DIWW (405(g)) <input type="checkbox"/> 844 SSDI Title XVI <input type="checkbox"/> 845 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party <input type="checkbox"/> 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):

35 U.S.C. § 1 et. seq.

Brief description of cause:

Patent Infringement

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) (See instructions):

IF ANY

October 2, 2009

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

3. Plaintiff 3M Company is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business at 3M Center, St. Paul, Minnesota, 55133.

4. On information and belief, defendant Central Solutions is a corporation organized and existing under the laws of the state of Missouri with its principal place of business at 401 Funston Road, Kansas City, Kansas. On information and belief, Central Solutions makes, uses, offers for sale, and sells skin sanitizer products to distributors and customers throughout the United States, including distributors and customers in this judicial district.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Defendant under Minn. Stat. § 543.19. Defendant transacts business in Minnesota and has otherwise committed acts in and beyond Minnesota causing injury to Plaintiffs in Minnesota.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1400(b).

THE PATENTS-IN-SUIT

8. On July 18, 2000, United States Patent No. 6,090,395 ("the '395 patent"), entitled "Stable Hydroalcoholic Compositions," was duly and legally issued by the United States Patent and Trademark Office. 3M Innovative Properties Company owns the '395 patent by assignment. 3M Company is the exclusive licensee of the '395 patent

and has standing to bring an action for infringement of the '395 patent. A true and correct copy of the '395 patent is attached as Exhibit A to this Complaint.

9. On March 18, 2003, United States Patent No. 6,534,069 ("the '069 patent"), entitled "Stable Hydroalcoholic Compositions," was duly and legally issued by the United States Patent and Trademark Office. 3M Innovative Properties Company owns the '069 patent by assignment. 3M Company is the exclusive licensee of the '069 patent and has standing to bring an action for infringement of the '069 patent. A true and correct copy of the '069 patent is attached as Exhibit B to this Complaint.

10. On September 23, 2003, United States Patent No. 6,623,744 ("the '744 patent"), entitled "Stable Hydroalcoholic Compositions," was duly and legally issued by the United States Patent and Trademark Office. 3M Innovative Properties Company owns the '744 patent by assignment. 3M Company is the exclusive licensee of the '744 patent and has standing to bring an action for infringement of the '744 patent. A true and correct copy of the '744 patent is attached as Exhibit C to this Complaint.

11. On July 25, 2006, United States Patent No. 7,081,246 ("the '246 patent"), entitled "Stable Hydroalcoholic Compositions," was duly and legally issued by the United States Patent and Trademark Office. 3M Innovative Properties Company owns the '246 patent by assignment. 3M Company is the exclusive licensee of the '246 patent and has standing to bring an action for infringement of the '246 patent. A true and correct copy of the '246 patent is attached as Exhibit D to this Complaint.

3M'S PATENTED SKIN SANITIZERS

12. Hydroalcoholic compositions include emulsions of alcohols and water. Certain hydroalcoholic emulsions of alcohols, particularly short chain alcohols (such as ethanol), and water are useful for skin sanitizer products, such as skin disinfectants, surgical hand preparations, patient skin preparations and antimicrobial hand lotions. However, formulating useful hydroalcoholic emulsions is difficult for at least two reasons. First, addition of short chain alcohols (such as ethanol) to an aqueous system decreases the surface tension of the composition dramatically. Second, many surfactants typically used in such emulsions become completely or partially soluble in hydroalcoholic systems.

13. 3M has been and continues to be an innovator in the field of hydroalcoholic compositions. Through years of innovation and research, 3M has made a series of patented innovations in hydroalcoholic compositions and processes that have addressed the problems associated with the prior art compositions. Hydroalcoholic compositions innovated by 3M are described and claimed in the '395, '069, '744, and '246 patents. 3M's patented hydroalcoholic compositions can achieve bacterial, fungal, and viral kill equal to or better than a traditional soap and water scrub, in a shorter period of time, while maintaining or improving the skin's natural barrier to infection.

14. 3M has commercialized hydroalcoholic compositions embodying the inventions claimed in the '395, '069, '744, and '246 patents as skin sanitizer products, such as skin disinfectants, surgical hand preparations, patient skin preparations and

antimicrobial hand lotions. 3M has sold such products for several years in this district and throughout the United States, including the products known as Avagard™ Surgical Scrub, Avagard-D™ Hand Sanitizer and Nexcare™ Hand Sanitizer. 3M's patented hydroalcoholic compositions have enjoyed substantial commercial success since their introduction to the market and are used by health care professionals and other customers throughout the United States. The benefits provided by the hydroalcoholic compositions described in the patents-in-suit have contributed to the success of 3M's skin disinfectants, surgical hand preparations, patient skin preparations and antimicrobial hand lotions, and 3M consistently refers to those benefits in its marketing activities to distinguish its products from competing products.

CENTRAL SOLUTIONS' INFRINGING SKIN SANITIZERS

15. Central Solutions is engaged in the business of, *inter alia*, making, using, offering for sale, and selling skin sanitizer products that compete with 3M's skin sanitizer products.

16. Central Solutions' website, accessible at <http://www.centralsolutions.com>, depicts Central Solutions' DermaCen line of skin sanitizers. Included in this product line are hydroalcoholic compositions that embody the inventions described and claimed in the patents-in-suit. For example, Central Solutions' DermaCen Lotionized Hand Sanitizer, which is described on Central Solutions' website and depicted below, are comprised of hydroalcoholic compositions that literally practice the inventions claimed in the patents-in-suit:



**DermaCen Lotionized
Hand Sanitizer**

17. Central Solutions has made, used, offered for sale, sold, and continues to make, use, sell, and offer for sale hydroalcoholic compositions covered by the '395, '069, '744, and '246 patents under, for example, its DermaCen line of products. Central Solutions markets and distributes its DermaCen line of products including those depicted above, throughout the United States, including in this judicial district, directly and through third party distributors.

18. Central Solutions has made, used, offered for sale, sold, and continues to make, use, sell and offer for sale hydroalcoholic compositions that are substantially the same as those in its DermaCen skin sanitizer products to one or more distributors that private label the Central Solutions' products with the distributors' brand and market and distribute the private label products throughout the United States, including in this judicial district.

FIRST CLAIM FOR RELIEF
CENTRAL SOLUTIONS' INFRINGEMENT OF THE '395 PATENT

19. 3M realleges and incorporates by reference Paragraphs 1 through 18 of this Complaint.

20. Defendant Central Solutions has been and is directly infringing, actively inducing others to infringe and/or contributing to the infringement of the '395 patent by making, using, offering for sale and/or selling hydroalcoholic compositions, including, for example, DermaCen Lotionized Hand Sanitizer and private label products, in this district and elsewhere in the United States, in violation of 35 U.S.C. § 271.

21. On information and belief, defendant Central Solutions will continue to directly infringe, actively induce others to infringe, and/or contribute to the infringement of the '395 patent unless and until Central Solutions is enjoined by this Court.

22. On information and belief, defendant Central Solutions' continuing infringement of the '395 patent after notice of this action and/or notice of the '395 patent constitutes willful infringement. By knowingly continuing to commit acts of infringement with knowledge of the '395 patent, Central Solutions' actions are objectively reckless and constitute willful infringement of the '395 patent.

23. Defendant Central Solutions has caused and will continue to cause 3M irreparable injury and damage by infringing the '395 patent. 3M will suffer further irreparable injury, for which 3M has no adequate remedy at law, unless and until Central Solutions is enjoined from infringing the '395 patent. The balance of hardships and the

public interest favor entry of a permanent injunction to prohibit Central Solutions from continuing to infringe the '395 patent.

SECOND CLAIM FOR RELIEF
CENTRAL SOLUTIONS' INFRINGEMENT OF THE '069 PATENT

24. 3M realleges and incorporates by reference Paragraphs 1 through 18 of this Complaint.

25. Defendant Central Solutions has been and is directly infringing, actively inducing others to infringe and/or contributing to the infringement of the '069 patent by making, using, offering for sale and/or selling hydroalcoholic compositions, including, for example, DermaCen Lotionized Hand Sanitizer and private label products, in this district and elsewhere in the United States, in violation of 35 U.S.C. § 271.

26. On information and belief, defendant Central Solutions will continue to directly infringe, actively induce others to infringe, and/or contribute to the infringement of the '069 patent unless and until Central Solutions is enjoined by this Court.

27. On information and belief, defendant Central Solutions' continuing infringement of the '069 patent after notice of this action and/or notice of the '069 patent constitutes willful infringement. By knowingly continuing to commit acts of infringement with knowledge of the '069 patent, Central Solutions' actions are objectively reckless and constitute willful infringement of the '069 patent.

28. Defendant Central Solutions has caused and will continue to cause 3M irreparable injury and damage by infringing the '069 patent. 3M will suffer further

irreparable injury, for which 3M has no adequate remedy at law, unless and until Central Solutions is enjoined from infringing the '069 patent. The balance of hardships and the public interest favor entry of a permanent injunction to prohibit Central Solutions from continuing to infringe the '069 patent.

THIRD CLAIM FOR RELIEF
CENTRAL SOLUTIONS' INFRINGEMENT OF THE '744 PATENT

29. 3M realleges and incorporates by reference Paragraphs 1 through 18 of this Complaint.

30. Defendant Central Solutions has been and is directly infringing, actively inducing others to infringe and/or contributing to the infringement of the '744 patent by making, using, offering for sale and/or selling hydroalcoholic compositions, including, for example, DermaCen Lotionized Hand Sanitizer and private label products, in this district and elsewhere in the United States, in violation of 35 U.S.C. § 271.

31. On information and belief, defendant Central Solutions will continue to directly infringe, actively induce others to infringe, and/or contribute to the infringement of the '744 patent unless and until Central Solutions is enjoined by this Court.

32. On information and belief, defendant Central Solutions' continuing infringement of the '744 patent after notice of this action and/or notice of the '744 patent constitutes willful infringement. By knowingly continuing to commit acts of infringement with knowledge of the '744 patent, Central Solutions' actions are objectively reckless and constitute willful infringement of the '744 patent.